

GRACE PETROLEUM CORP.

IBLA 81-255

Decided March 8, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease to have terminated by operation of law for nonpayment of rental. W 56493.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

2. Oil and Gas Leases: Rental Deficiency -- Oil and Gas Leases: Termination

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of \$10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

3. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the

lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

APPEARANCES: Richard H. Bate, Esq., Denver, Colorado, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

Grace Petroleum Corporation appeals from a letter decision dated December 15, 1980, by the Wyoming State Office, Bureau of Land Management (BLM), holding that oil and gas lease W-56493 terminated automatically because the annual rental paid was insufficient by more than a nominal amount of the total due.

The lease was issued to Neil E. Salsich effective November 1, 1977. A proposed assignment of the lease was filed with BLM on December 1, 1980, by Salsich, assigning the lease to Grace Petroleum Corporation. This proposed assignment has not been approved by BLM. On October 14, 1980, a check in the amount of \$600 to cover the rental was received by BLM. The amount due was \$1,200. On November 10, 1980, BLM received a second check for \$600 from appellant, along with a petition for reinstatement. BLM's decision noted that under 43 CFR 3108.2-1, a deficiency notice would be sent if the deficiency were nominal, or not be more than \$10 or 5 percent of the total due. BLM held that the rental was insufficient by more than the nominal amount and that the lease terminated automatically when payment was not made by the anniversary date. BLM noted that a refund of \$600 would be "scheduled to be sent" to Salsich for the first payment, and that a second refund of \$600 would be sent to Grace Petroleum Corporation.

Grace Petroleum Corporation appealed the decision, contending as follows: During September 1980 appellant negotiated a purchase of the lease from Salsich. Prior to receiving an assignment, Grace Petroleum Corporation paid the 1980 rental on September 19, 1980, in the amount of \$600. On October 23, 1980, according to appellant, BLM mailed a receipt for payment to Salsich indicating a deficient rental payment. Further, according to appellant, Salsich did not notify appellant that additional rental was payable until November 7, 1980, on which date appellant mailed a check to the Wyoming State Office. This check, accompanied by a petition for reinstatement, was received November 10, 1980. Appellant's argument is twofold: (1) The present case falls within an exception to the automatic termination rule under 43 CFR 3108.2-1(b), involving a deficiency caused by an erroneous indication of the rental amount in the lease or in a bill or decision; or (2) by filing a petition for reinstatement, appellant asserts, in effect, that it exercised due diligence or that the late payment was justifiable.

[1] The main issue in this case is the status of appellant as possible holder of record of the lease. The closest precedential case appears to be Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, Civil Action No. 79-1274 (D.D.C., filed April 30, 1980). This case involved a potential assignee to which the original lessee had attempted an

assignment of the lease. Certain required documents were not filed and until they were filed the Board held that the assignment could not be approved. This case also involved the filing of a partial relinquishment and a rental payment at the time the assignment was in process. The decision states at 136-37:

Although 30 U.S.C. § 187a (1976) and 43 CFR 3106.3-3 provide that the effective date of an assignment is the first day of the month following the date of filing an assignment application, this is expressly made subject to the approval of the assignment by the Department so that the assignee does not automatically become substituted as the holder of record title. Furthermore, 30 U.S.C. § 187a (1976) also states: "Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Because the assignment is thus contingent upon Departmental approval, neither the statutory or regulatory provisions as to the effective date mean that an assignment automatically becomes effective for all purposes on the first day of the month after filing or that the Department is estopped from disapproving an application after that date. The assignor, therefore, remains record title holder until the assignment is approved. See Oasis Oil Co. v. Bell Oil & Gas Co., 106 F. Supp. 954, 957 (W.D. Okla., 1952).

Accordingly, on the basis of the foregoing, we find that, as the attempted assignment by Salsich has not been approved by the Department, Salsich was the holder of record of lease W 56493 as of the date the rental was due.

[2] We turn to the question whether the lease has terminated, and, if it has, whether it may be reinstated. The applicable statute, 30 U.S.C. § 188(b) (1976), provides that "upon failure of a lessee to pay rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law \* \* \*." The rental in the amount of \$1,200 was due November 1, 1980. Six hundred dollars was received on October 14, 1980, and another \$600 was received on November 10, 1980. The deficiency of \$600 as of November 1, 1980, exceeded \$10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1. Therefore lease W-56943 terminated. Appellant's argument that the deficiency was caused by an erroneous indication of the rental amount in the lease is without merit. While appellant alleges it was misled by the lease terms, the real question is whether the lessee of record, Salsich, who had the obligation to pay, was misled. He was not misled because he had actual notice of the correct rental and, in fact, as the BLM decision notes, had been paying it since the lease was issued.

[3] The only remedy left by which the lease could be saved is reinstatement on the grounds that the failure to pay rental timely was either justifiable or that the lessee exercised due diligence. See Martin Mattler, 53 IBLA 323 (1981), and cases therein cited. It has been found above that

Salsich and not the appellant is the holder of record because the assignment has not been approved. Only the holder of record of the lease could claim or request reinstatement, and he has not made any such request. Moreover, there is no evidence that any activity or action by Salsich would meet the requirements for reinstating the lease under the precedents referred to above. We therefore find that the decision below correctly ruled that lease terminated by operation of law for nonpayment of rental.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

